CRL APPEAL NO. 318 OF 2004

The 1st Appellant/1st Accused viz Thenaliwas directed to be released on bail as per the order of this Court dated 12.04.2005and made in CRL MP NO. 2593/05.

The Appellant 2 to 5/accused Nos. 2 to 5 viz Elango, Sarveswaran, Settu and Seenu @ Seenuvasan were directed to be released on bail as per the order of this Court dated 04.03.2004 and made in CRL MP NO. 2552/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2006

CORAM

THE HONOURABLE MR JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 318 of 2004

1. Thenali
2. Ilango
3. Sarveswaran
4. Settu
5. Seenu @ Seenuvasan ... Appellants. (Accused No. 1 to 5)

Vs

State rep. by
Inspector of Police,
Chetpet Police Station. ... Respondent (Complainant)

Prayer: Appeal against the judgment passed by the learned District and Sessions Judge, Thiruvannamalai, in S.C.No.59 of 2002 dated : 13.2.2004.

For Appellant : Mr. K.S.Rajagopalan

For Respondent : Mr.P.Kumaresan
Addl. Public Prosecutor.

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

The appellants, five in number, have challenged the judgment of the District and Sessions Division, Thiruvannamalai, made in S.C.No.59 of 2002, whereby, the appellants/accused stood charged as follows:-

https://hcservices.ecourts.gov.in/hcservices/

A-1 to A-5 were charged under Section 120(b) IPC. A-1 and A-2 were charged under Section 323 IPC. A-1 to A-5 were also charged under Section 506(ii) IPC. A-2 to A-5 were charged under Section 147 IPC. A-2 was charged under Sections 148 and 302 IPC. A-2 to A-5 were charged under Section 302 read with 149 IPC. On trial, A-1 was found guilty under Section 148 IPC. and sentenced to undergo three years rigorous imprisonment with a direction to pay a fine of Rs.2,000/-, in default, to undergo two months rigorous imprisonment and he was also convicted under Section 302 IPC. and sentenced to life imprisonment with a further direction to pay a fine of Rs.10,000/-, in default, to undergo six months rigorous imprisonment. A-2 to A-5 were found guilty under Section 147 IPC. and each one of them was sentenced to undergo one year rigorous imprisonment and also to pay a fine of Rs.1000/- each, in dafault, to undergo one month rigorous imprisonment and they were also convicted under Section 323 read with 149 IPC. and sentenced to undergo one year rigorous imprisonment with a further direction to pay a fine of Rs.500/- each, in default, to undergo one year rigorous imprisonment. In respect of the other charges, A-1 to A-5 were acquitted by the learned Sessions Judge.

2. The short facts necessary for the disposal of this appeal can be stated thus:-

i.P.W.1, an Astrologer by profession, is a resident of Ulagampattu. The deceased, Sekar, is his younger brother. On 7.2.2001 at about 8.00 a.m., when P.W.1 was chatting with P.W.3 and others, A-1, who came in a motor cycle in a rash speed, hit on P.W.1. When his spectacle fell down, P.W.1 questioned A-1. Hence, A-1 beat P.W.1 on his left cheek and A-2 beat P.W.1 on his left thigh with a stone. Thereafter, all the accused left the place. At about 11.00 a.m., A-1 to A-5 again came to the house of P.W.1 and asked about his younger brother, Sekar, and challenged that they would finish him of.

iii. On the next day morning, i.e., on 8.2.2001 at about 7.00 a.m., P.Ws.1 to 4 along with his younger brother, Sekar, went outside for attending nature's call. At that time, all the five accused constituted an unlawful assembly having a common object and came to the spot. A-1 attacked Sekar with an iron rod on his neck, A-2 to A-4 attacked Sekar with bamboo sticks on his legs, joint and stomach. They also beat him with their hands. A-5 hit Sekar on his left cheek with a stone. Sekar fell down unconscious. Thereafter, all the accused fled away from the place of occurrence leaving their weapons. This was witnessed by P.Ws.1 to 4.

iii.Thereafter, Sekar was immediately taken to a private hospital in a car driven by P.W.7, from where, he was taken to another private hospital at Chetpet, where the doctor advised them to take the injured to Government Hospital, Vellore.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

iv Accordingly, The injured Sekar was taken to Government Hospital at Vellore, where he was admitted at 1.40 p.m. by the doctor, P.W.13, who, on examining the injured, issued Ex.P-4, the copy of the accident register. An intimation was sent to the Outpost Police Station.

v. On receipt of the intimation from the hospital authorities, P.W.8, the Head Constable, who was on duty at that time, went to the hospital and since the injured was in an unconscious state, he recorded the statement from P.W.1, which is marked as Ex.P-1, on the strength of which, a case came to be registered in Crime No.47 of 2001 for the offences under Sections 147, 148, 341, 323, 323 and 506(ii) IPC. by P.W.15, the Sub Inspector of Police attached to Chetpet Police Station. The first information report, Ex.P-9, was despatched to the Court. The case was taken up for investigation and on inspection of the scene of occurrence, an observation mahazar and a rough sketch were prepared. The material objects were also recovered by the investigating officer.

vi P.W.16, Inspector of Police, took up further investigation in the case. On receipt of the intimation from the hospital that Sekar, who was admitted in the hospital for treatment, died at about 3.15 a.m. on 11.2.2001, the case was converted to one under Section 302 IPC. and the altered first information report, which was marked as Ex.P-11, was despatched to Court and also to the higher officials. P.W.16 went to the hospital and conducted inquest over the dead body of Sekar in the mortuary in the presence of witnesses and Panchayatdars and prepared Ex.P-12, the inquest report.

vii. The dead body was subjected to post-mortem by P.W.11, the doctor, who has given the post-mortem certificate, Ex.P-6, wherein he has opined that the deceased died out of the head injury about 6 to 24 hours prior to autopsy.

viii During investigation, all the accused were surrendered before the Court. The investigating officer, on completion of the investigation, filed the final report.

3. The case was committed to the Court of Sessions. Necessary charges were framed and in order to substantiate the charges, the prosecution has examined 18 witnesses and relied on 12 exhibits and marked 9 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. On the side of the defence, neither a witness was examined nor a document has been marked. After hearing the arguments advanced by both sides and on scrutiny of the materials available, the trial Court found the accused guilty as per the charges and awarded punishment as referred to above, which is the subject matter of challenge before

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

this Court.

4. The learned Counsel appearing for the appellants, inter alia, made the following submissions:-

a) According to the prosecution, the occurrence has taken place at about 7.00 a.m. on 8.2.2001. Four witnesses were examined as eye witnesses and they are P.Ws.1 to 4. According to the prosecution, the first document, which has come to existence, is the statement given to the doctor, P.W.13, by P.W.1, who took the injured Sekar to the hospital. The said document, viz., the copy of the accident register, has been marked as Ex.P-8, wherein it is found that four persons were mentioned as assailants and weapons used were mentioned as iron road and the back portion of the knife. Thus, the earliest document contained only four persons as assailants and it does not speak about the fifth person or the weapon held by him.

b) Added further, learned Counsel, that P.W.2, the wife of the deceased, in her evidence, has stated that police officials came to the hospital and recorded the statement given by her. But P.W.1 informed the police officials that the statement given by P.W.2 need not be taken into account, but he would give another statement and so saying, he left with the police people. On the other hand, P.Ws.3 and 4, in their evidence, have stated that the police came to the spot of occurrence at about 10.00 a.m. and they also recorded a statement from P.W.4 at that time. If it be so, then the prosecution came forward with a case by saying that when the injured, Sekar, was admitted in the Government Hospital at Vellore, an intimation was given to the Outpost Police Station and thereafter, P.W.8, the Head Constable, who was on duty at that time, came to the hospital and since the injured Sekar was in unconscious state, he recorded the statement of P.W.1 at about 1.00 p.m. on 8.2.2001, on the basis of which, a case came to be registered, which would go to show that the evidence of P.Ws.2 to 4 would clearly destroy the case of the prosecution that the first information report has come into existence at 1.00 p.m. on 8.2.2001. If it be so, the earliest document, which is the original information, was not placed before the Court.

c) At this juncture, the evidence of P.W.8 assumes importance. The learned counsel would submit that the all these witnesses, viz., P.Ws.1 to 4, the so called eye witnesses, came to know that the dead body of Sekar was lying in a place and on coming to know about the same, all of them went there and an information was given by them to the police without even seeing the occurrence or any of the assailants.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

d) Added further, the learned counsel that, according to P.W.7, who was the owner of the car and who took the injured Sekar along with the witnesses to the hospital, when he came to the place of occurrence at about 8.30 a.m., the villagers were questioning P.Ws.1 to 4 as to how the occurrence took place and they replied that they did not know the way and the manner in which the occurrence has taken place and they did not speak about the assailants also.

e) The learned counsel would further submit that according to P.W.8, the Head Constable attached to Outpost Police Station, who recorded the statement of P.W.1, even in the information given by P.W.1, he did not mention as to how the occurrence has taken place and which assailant was holding which weapon and how they were attacked are not mentioned and when further questioned, P.W.8 has answered that even a question was posed to P.W.1, for which, he could not give any answer, since he did not see the occurrence. Under such circumstances, all the above would go to show that these witnesses could not have been present in the place of occurrence at all.

f) Added further, the learned counsel, that the medical evidence also did not support the prosecution case, since in the post-mortem certificate issued by P.W.11, the doctor, there is no external injury corresponding to the attack made by A-1 by using an iron rod. Apart from that, he would also submit that in the earliest statement made to P.W.13, the doctor, only four persons were shown as assailants, but in the instant case, five persons were shown as assailants and even the first information report in question did not contain necessary particulars.

g) Added further, the learned counsel, that apart from that, the observation mahazar does not refer to any weapons in the place of occurrence, but subsequently, the prosecution came forward with a version that all the weapons, which was placed before the Court, were recovered from the place of occurrence on the next day of occurrence. If it be true, there is no need for making any omission in the observation mahazar, which fact would go to show that all these weapons of occurrence were subsequently introduced.

h) The learned counsel would submit that in the instant case, the witnesses, who were examined as eye witnesses had no knowledge about the crime and the original information was suppressed and what was placed before the Court is not the first information and under such circumstances, the benefit of doubt should be given to the accused/appellants and since the lower Court has not considered the above aspects of the matter, they are entitled for acquittal in the hands of this Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. The Court heard the learned Additional Public Prosecutor appearing for the State on the above contentions.

6. The Court paid its anxious consideration to the submissions made and thoroughly scrutinised the available materials. It is not in controversy that the brother of P.W.1 was attacked by the accused and he died in the hospital. In order to substantiate that the deceased died out of homicidal violence, the prosecution has P.W.11, the doctor, who conducted post-mortem and who issued the post-mortem certificate, Ex.P-6, wherein he has opined that the deceased died out of the head injuries sustained by him. Apart from that, the said fact was not disputed by the accused/appellants either before the trial Court or before this Court and hence, without any difficulty, it could be concluded that the deceased died out of homicidal violence.

7. In order to substantiate the case, the prosecution has relied on the direct evidence of P.Ws.1 to 4, who, according to the prosecution, were the eye witnesses. Now at this juncture, it is necessary to point out that since these witnesses are close relatives, the test of careful scrutiny must be applied before accepting their evidence. According to P.W.1, it was he, who gave the information to P.W.8, Head Constable, at the earliest point of time, as a result of which, Ex.P-1 has come into existence. When Ex.P-1 is scrutinised, at the first column, it speaks about the number of accused, who are the five appellants. Though it narrates the incident, it does not reveal actually which accused was holding which weapon and in which manner the occurrence took place. It is to be remembered that P.W.1 was an eye witness. There is all possibility for him to speak about the occurrence. But he has not spoken so.

8. As rightly pointed out by the learned counsel for the appellant, it is highly doubtful, whether Ex.P-1 is the first information, as alleged by the prosecution. According to P.W.2 , at about 1.00 p.m., the police have come to the scene of occurrence and P.W.2 gave a statement to the police, which was also recorded. Afterwards, P.W.1 informed the police that the statement already given by P.W.2 need not be acted upon and he would give another statement and so saying, he went along with the police. It would be quite clear that the earlier information given by P.W.2 as to the occurrence was not placed before the Court. The same seems to have been suppressed.

9. At this juncture, it is to be pointed out that it is highly doubtful, whether P.Ws.1 to 4 could have seen the occurrence. It would be quite clear from the evidence of P.W.7, who was the owner of the car, in which the deceased Sekar along with the witnesses were taken to the Government Hospital at Vellore. P.W.7 has categorically stated that he came to the place

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

of occurrence at 8.30 a.m. and the villagers were asking P.Ws.1 to 4 as to how the occurrence took place, for which, they informed the villagers that they did not know how it had taken place and who were the assailants. This evidence of P.W.7 becomes affirmed by the evidence of P.W.8, the Head Constable attached to the Outpost Police Station at Government Hospital, Vellore. According to P.W.8, P.W.1 gave the statement in the hospital and the same was recorded, which has been marked as Ex.P-1. Further, in cross-examination, it has been candidly admitted that P.W.1 did not speak about the manner of occurrence, because he did not know who were all present at the time of occurrence and this evidence of P.W.7 in corroboration of P.W.8 would go to show that P.Ws.1 to 4 had no knowledge about the participation of the assailants or about the occurrence at all. Under such circumstances, the fact that P.Ws.1 to 4 had no knowledge about the occurrence, coupled with the fact that the information given by P.W.2 at the earliest point of time has been suppressed would go to show that what was placed before the trial Court was not the actual occurrence, but it was an occurrence that has been intended by P.W.1 as found in Ex.P-1. Even a reading of Ex.P-1 does not speak about the manner of occurrence and thus, the Court is of the opinion that the case was not placed before the Court as it was and there is no guarantee that the allegations found in Ex.P-1 were true and could be acted upon.

10. Apart from that, as rightly contended by the learned counsel for the appellants, the medical evidence also did not support the ocular testimony and so far as the recovery part is concerned, it is the case of the prosecution that the weapons were recovered by the police from the place of occurrence on the next day of occurrence. Even in the observation mahazar, which came into existence, does not speak about the availability of any one of the material objects in the place of occurrence and that would also reflect the case of the prosecution in the negative. When all the above said facts are put together, it cannot be said that the prosecution has proved its case beyond reasonable doubt. While the prosecution case suffers with all these infirmities and lacunas, as shown above, it would be quite unsafe to find the accused guilty. The trial Court has not considered the above aspects of the matter and hence the judgment of the lower Court is to be made undone by upsetting the judgment.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. The criminal appeal is allowed. The conviction and sentence imposed upon the appellants/accused are set aside. The appellants/accused are acquitted of the charges levelled against them. It is reported that the accused/appellants are on bail. The bail bonds executed by them shall stand cancelled. The fine amount, if paid, shall be refunded to them.

bs/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District and Sessions Judge, Thiruvannamalai.

2. The Judicial Magistrate, Polur, Thiruvannamalai.
3. Do Thro The Chief Judicial Magistrate, Thiruvannamalai.
4. The Inspector of Police, Chetpet Police Station,Thiruvannamalai.
5. The Superintendent, Central Prison, Vellore.
6. The District Collector, Thiruvannamalai.
7.The Director General of Police, Madras.
8.The Public Prosecutor, High Court, Madras.

+ one cc to Mr. K.S. Rajagopalan, Advocate sr no. 46174

JRG(CO)
NM(12.10.2006)

Crl.A.No.318 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/